

Restricted
HEADQUARTERS EIGHTH ARMY
United States Army
Office of the Staff Judge Advocate

Yokohama, Japan

UNITED STATES OF AMERICA VS KINZABURO NIIZUMA
UNITED STATES OF AMERICA VS KENICHI KIKUCHI
UNITED STATES OF AMERICA VS UMESAKU NAKAO
UNITED STATES OF AMERICA VS NOBUMASA TAKEDA

Review of the Staff Judge Advocate

1. The attached record of trial of Kinzaburo Niizuma, Kenichi Kikuchi, Umesaki Nakao and Nobumasa Takeda at Yokohama, Japan, from 14 May 1947 to 23 May 1947, by a Military Commission appointed by paragraph 20, Special Orders No. 108, Headquarters, Eighth Army, United States Army, dated 9 May 1947, having been referred to the Staff Judge Advocate, this review thereof is submitted to the Commanding General.

Personal Data Concerning Accused

NAME: Kinzaburo Niizuma ✓	DATE OF CONFINEMENT: 23 November 1945
AGE: 46	DATE OF ARRAIGNMENT: 14 May 1947
RESIDENCE: Not shown.	PLACE OF TRIAL: Yokohama, Japan
MARITAL STATUS: Not shown.	PERIOD OF TRIAL: 14 May 1947 to 23 May 1947
RELATIVES: Not shown.	DATE OF SENTENCE: 23 May 1947
EDUCATION: Graduate of Tokyo Imperial University.	SENTENCE: CHL for 8 years.
VOCATION: Company employee	
MILITARY CAREER: Imperial Japanese Army April 1928 to 31 January 1929; February 1940 to May 1943; February 1944 to August 1945.	
CLEMENCY RECOMMENDED BY COMMISSION: No	

NAME: Kenichi Kikuchi ✓	DATE OF CONFINEMENT: 1 July 1946
AGE: 26	DATE OF ARRAIGNMENT: 14 May 1947
RESIDENCE: Hokkaido, Ashiodo, Oaza Rikugun Betsu Mura, Aza Rikugun Betsu Mura Bunsen, 5 Banchi.	PLACE OF TRIAL: Yokohama, Japan
MARITAL STATUS: Married.	PERIOD OF TRIAL: 14 May 1947 to 23 May 1947.
RELATIVES: Wife and one child.	DATE OF SENTENCE: 23 May 1947
EDUCATION: Graduate of Middle School.	SENTENCE: CHL for 8 years.
VOCATION: Employee government forestry division.	
MILITARY CAREER: Imperial Japanese Army 1942 to an undisclosed date.	
CLEMENCY RECOMMENDED BY COMMISSION: No.	

NAME: Umesaku Nakao ✓	DATE OF CONFINEMENT: 8 December 1945
AGE: 35	DATE OF ARRAIGNMENT: 14 May 1947
RESIDENCE: Hokkaido, Asahi Gawa, Hichi, 13 Cho He, Migi Yongo.	PLACE OF TRIAL: Yokohama, Japan
MARITAL STATUS: Married.	PERIOD OF TRIAL: 14 May 1947 to 23 May 1947
RELATIVES: Wife and 2 children.	DATE OF SENTENCE: 23 May 1947
EDUCATION: Not shown.	SENTENCE: CHL for 5 years.
VOCATION: Factory employee.	
MILITARY CAREER: Imperial Japanese Army 12 November 1938 to August 1945.	
CLEMENCY RECOMMENDED BY COMMISSION: No	

Restricted

Restricted

NAME: Nobumasa Takeda
AGE: 30
RESIDENCE: Hokkaido, Tokachi, Shimizu
Machi, Minami Sanjo, Nishi Nichome,
7 Banchi.
MARITAL STATUS: Single.
RELATIVES: Not shown.
EDUCATION: Graduate of Hosei University.
VOCATION: Not shown.
MILITARY CAREER: Imperial Japanese Army
1 February 1942 to August 1945.
CLEMENCY RECOMMENDED BY COMMISSION: No.

DATE OF CONFINEMENT: 15 December 1945
DATE OF ARRAIGNMENT: 14 May 1947
PLACE OF TRIAL: Yokohama, Japan
PERIOD OF TRIAL: 14 May 1947 to 23 May
1947
DATE OF SENTENCE: 23 May 1947
SENTENCE: CHL for 5 years.

2. Synopsis of Charges, Pleas, Findings, Legal Sufficiency and Sentence:

<u>Charges and Specifications:</u>	<u>Pleas</u>	<u>Findings</u>	<u>Legally Sustained</u>
<u>NIIZUMA</u>			
Charge: Between 28 June 1945 and 15 August 1945, accused, then Lieutenant and later Captain in the Armed Forces of Japan, did violate the Laws and Customs of War.	NG	G	Yes
Sp 1: Between 28 June 1945 and 15 August 1945, accused did willfully and unlawfully disregard his duty as Camp Commander by failing and neglecting to provide adequate and proper food, clothing, sanitation, sleeping accommodations, and safe working conditions for numerous American PWs.	NG	NG	
Sp 2: Between 28 June 1945 and 15 August 1945, accused did unlawfully disregard and fail to discharge his duty as Commander of said camp, to control and restrain members of his command and persons under his control and supervision, by permitting them to commit the following acts, atrocities and other offenses against certain American PWs:			
a. On or about 12 July 1945, the unlawful mistreatment and abuse by Kenichi Kikuchi of Charles C. Hill and Frank H. Houschildt, American PWs, by beating them.	NG	G	Yes
b. During the month of July 1945, the unlawful mistreatment and abuse by Kenichi Kikuchi of Eugene R. Ryan, an American PW, by beating him.	NG	G	Yes
c. Between 28 June 1945 and 15 August 1945, the unlawful mistreatment and abuse by Kenichi Kikuchi, of Bernard O. Ketner, Dave J. Rush, Robert Brown, Irving B. Silverlieb, Gordon L. Smith, Wade B. McCaulley, Robert S. Box, Vincent H. Verga, Rufus B. Austin, James P. Mitchell and numerous other American PWs by beating them.	NG	G	Yes

Restricted

d. Between 28 June 1945 and 15 August 1945, the unlawful misappropriation by Kenichi Kikuchi, of Red Cross food supplies and Japanese issued food intended for the use and benefit of American PWs.

NG

NG

e. Between 28 June 1945 and 15 August 1945, the unlawful mistreatment and abuse by Umesaku Nakao of numerous American PWs by withholding and refusing to issue available medicines and medical supplies to them and by forcing them to perform arduous labor when ill and physically unfit to perform such labor.

NG

G,

Yes

excepting the words, "and by forcing them to perform arduous labor when ill and physically unfit to perform such labor;" of the excepted words, Not Guilty.

f. Between 28 June 1945 and 15 August 1945, the unlawful mistreatment by Umesaku Nakao, of Ralph E. Johnson, Eugene W. Shugart, Robert L. Frey, Gene A. Fleener, Robert E. Cooper, Wilford J. Lindsay, Vincent H. Verga, James H. Cole, James C. McWiggins, and numerous other American PWs, by beating and abusing them.

NG

G

Yes

g. Between 28 June 1945 and 15 August 1945, the unlawful misappropriation and conversion to his own use on numerous occasions, by Umesaku Nakao, of Red Cross medical supplies furnished and intended for the use and benefit of American PWs.

NG

G,

Yes

excepting the words, "and conversion to his own use;" of the excepted words, Not Guilty.

h. On or about 7 July 1945, the unlawful mistreatment and abuse by Nobumasa Takeda of Herman A. Todd, an American PW, by beating him.

NG

G

Yes

KIKUCHI

Charge: Between 28 June 1945 and 15 August 1945, accused, then a civilian employee of the Armed Forces of Japan, did violate the Laws and Customs of War.

NG

G

Yes

Sp 1: That on or about 12 July 1945, accused did willfully and unlawfully mistreat and abuse Charles C. Hill and Frank H. Houschildt, American PWs, by beating them.

NG

G

Yes

Sp 2: That during the month of July 1945, the accused did willfully and unlawfully mistreat and abuse Eugene R. Ryan, an American PW, by forcing him to run uphill while pulling a supply cart and by beating him.

NG

G

Yes

Sp3: That between 28 June 1945 and 15 August 1945, accused did willfully and unlawfully mistreat Bernard O. Ketner, Dave J. Rush, Robert Brown, Irving B. Silverlieb, Rufas B. Austin, Gordon L. Smith, Wade B. McCaulley, Robert S. Box,

NG

G

Yes

Restricted

Restricted

Vincent H. Verga, James P. Mitchell and numerous other American PWs, by beating them.

Sp 4: That between 28 June 1945 and 15 August 1945, accused did willfully and unlawfully misappropriate Red Cross and other supplies, furnished and intended for the use of American PWs.	NG	NG	
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NAKAO

Charge: Between 28 June 1945 and 15 August 1945, accused, also known as "The Surgeon General", then a member of the Armed Forces of Japan, did violate the Laws and Customs of War.	NG	G	Yes
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Sp 1: Between 28 June 1945 and 15 August 1945, accused did willfully and unlawfully mistreat and abuse numerous American PWs by withholding and refusing to issue available medicines and medical supplies to sick American PWs and by allowing them to perform arduous labor when physically unfit to perform such labor.	NG	G, excepting the words "and by allowing them to perform arduous labor when physically unfit to perform such labor;" of the excepted words, Not Guilty.	Yes
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Sp 2: That between 28 June 1945 and 15 August 1945, accused did, on numerous occasions, willfully and unlawfully mistreat and abuse Ralph E. Johnson, Eugene W. Shugart, Robert L. Frey, Gene A. Fleener, Robert E. Cooper, Wilford J. Lindsay, Vincent H. Verga, James H. Cole, James C. McWiggins, and numerous other American PWs, by slapping and beating them.	NG	G	Yes
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Sp 3: That between 28 June 1945 and 15 August 1945, accused did, on numerous occasions, willfully and unlawfully misappropriate Red Cross medical supplies, furnished and intended for the use and benefit of Allied PWs.	NG	G	Yes
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TAKEDA

Charge: Between 28 June 1945 and 15 August 1945, accused, then Lance Corporal in the Armed Forces of Japan, did violate the Laws and Customs of War.	NG	G	Yes
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Sp 1: On or about 7 July 1945, accused did willfully and unlawfully mistreat and abuse one Herman A. Todd, an American PW, by beating him.	NG	G	Yes
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Sp 2: Between 28 June 1945 and 15 August 1945, accused did willfully and unlawfully mistreat and abuse numerous American PWs, by beating them.	NG	NG	
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Restricted

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Add. Charge: Accused, a member of the Imperial Japanese Army, did violate the Laws and Customs of War. NG NG

Add. Spec: In or about December 1943, at Makadote PW Camp No. 2, Ohasi, Honshu, Japan, accused did willfully and unlawfully mistreat Clarence L. Bolt, an American PW, by beating and otherwise abusing him. NG NG

3. Summary of the Evidence:

a. For the Prosecution:

NIIZUMA

This accused has been found guilty of command responsibility for the below enumerated sub-specifications. Evidence that accused knew of the acts was introduced as follows: Accused witnessed his subordinates beating prisoners (R. 48-49; Ex. 13). He did nothing about it (R. 49). Prisoner Hamas complained to accused that the prisoners were being beaten unmercifully (R. 48). Accused knew all of the conditions existing in the camp and allowed the NCO's to run the camp "as they saw fit" (Ex. 8). Beatings were a common occurrence (R. 121).

As to Specification 1: (Not Guilty)

As to Specification 2a:

Prisoners Hill and Houschildt were beaten by accused Kikuchi with stalks of fuki. (This is a stalk about one inch in diameter, "as hard as wood before cooking") (Ex. 1). He beat them wildly on the face and shoulders. The reason for the beating was that the two prisoners could not maintain the pace accused Kikuchi desired when they were pushing a cart loaded with fuki. The beating caused blood to run from their heads. Subsequent to the first beating he forced them to assume the position of attention and beat them a second time (R. 44, 63; Ex. 1, 13).

As to Specification 2b:

Accused Kikuchi beat prisoner Ryan when he was pushing a cart up a steep hill. Ryan, who was suffering with beriberi and had swollen legs and feet, was unable to maintain the speed desired by accused (R. 44, 122, 123; Ex. 1, 32).

As to Specification 2c:

Evidence was presented alleging that the accused Kikuchi beat the prisoners as stated under this specification (R. 44-47, 49, 50, 120, 123-124; Ex. 1, 5, 8, 10, 11, 15, 16, 30, 32).

As to Specification 2d: (Not Guilty)

As to Specification 2e:

Accused Nakao took all of the prisoners' medical supplies and locked them up. He permitted Lieutenant Kahn, naval medical officer, to have very small amounts with which to treat sick prisoners. As a result many prisoners suffered from dysentery, beriberi, diarrhea, colds and tonsillitis which he was unable to treat in a proper manner (R. 60, 61; Ex. 3-7, 9, 12, 19, 21-23, 31, 32).

As to Specification 2f:

Accused Nakao slapped, beat and kicked prisoners Johnson, Shugart, Frey, Fleener, Cooper, Lindsay, Verga, Cole, McWiggins and many other prisoners.

Restricted

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He continually harassed the tired and underfed prisoners day and night when he performed his duties as officer of the day (R. 47, 48, 119, 120, 121; Ex. 1, 6, 9, 10, 23, 25, 26, 32).

As to Specification 2g:

Not only did accused Nakao withhold available supplies, as is set forth under Specification 2e, but he held back Red Cross medical supplies the prisoners had brought with them from China. He used these Red Cross medical supplies to treat the Japanese personnel in the camp. Surgical instruments were kept from the prisoner medical officer. Because of this an emergency operation had to be performed at a civilian hospital by the prisoner medical officer. When it was performed he had to carry the patient back to the camp (Ex. 1, 5, 12, 32).

As to Specification 2h:

On the first day at the camp the prisoners were called together for an orientation. Accused Takeda was interpreting. Many of the prisoners were smoking and accused Takeda became angry and singled out prisoner Todd and struck him in the face twenty-five or thirty times with his fist. His face became swollen and bruised from this treatment and remained sore for about two days thereafter (R. 48, 54, 55, 60; Ex. 1, 4, 10, 11, 27, 28, 30, 32).

KIKUCHI

As to Specification 1:

Same as Niizuma Specification 2a.

As to Specification 2:

Same as Niizuma Specification 2b.

As to Specification 3:

Same as Niizuma Specification 2c.

As to Specification 4: (Not Guilty)

NAKAO

As to Specification 1:

Same as Niizuma Specification 2e.

As to Specification 2:

Same as Niizuma Specification 2f.

As to Specification 3:

Same as Niizuma Specification 2g.

TAKEDA

As to Specification 1:

Same as Niizuma Specification 2h.

As to Specification 2: (Not Guilty)

As to the additional Specification: (Not Guilty)

b. For the Defense:

The gist of the pertinent testimony, as presented by the defense, is as follows:

Restricted

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Accused Takeda took the stand and testified that he did not know the prisoner by the name of Todd (R. 80). He denied that he ever beat prisoners of war (R. 80, 82). It was during the "pledge" ceremony that he discovered the prisoner of war was smoking. He ordered him not to smoke during such ceremony. Immediately thereafter he went to the office and when he returned, he found this prisoner was still smoking. This accused merely pushed the prisoner. The prisoner was not on the ground at any time (R. 82). The prisoner remained standing after the pushing because the accused did not push him very hard. He was "cautioned" by the branch camp commander (accused Niizuma) for such treatment of this prisoner (R. 83-84).

Accused Nakao testified under oath that the medicines received in the camp were placed in the dispensary. He locked the medical cupboard because he thought the medicines might disappear and, further, there were poisons among such medicines. He never refused Doctor Kahn any medicines (R. 87, 100). Red Cross medicines were likewise kept in this cupboard (R. 94). At sick call when the prisoner-doctor desired medicines, the prisoner of war NCO medical orderly wrote a prescription and prepared the medicine and gave it to the patient. Later this prescription was brought to this accused. There was no time when the medical NCO did not have access to this medical cupboard on prescription of Doctor Kahn. They had no medicine similar to adrenaline (R. 88). This accused bought medicines for asthma and insect repellents at the village pharmacies. These were in addition to the issued medicines and were dispensed to the prisoners of war (R. 89). On one occasion a prisoner of war was sick with asthma. This accused learned that Branch Camp No. 2 had adrenaline and he went there and procured it for the prisoner (R. 96). He admitted slapping a group of prisoners, one slap each with his open hand, because they showed signs of resisting his order that they must shine their shoes (R. 89-90, 98). He denied ever hitting any other prisoners. He did not hit any prisoner with his wooden sword (R. 90, 96) or his fist (R. 90). He had no recollection of mistreating any prisoners (R. 90). He denied taking any Red Cross medical supplies for his own use (R. 91). The Japanese were not treated with Red Cross medicines but with Japanese medical supplies only. This accused stated that he had no authority to refuse Doctor Kahn the medicines he requested (R. 95). On one occasion when a prisoner got shocked in an electrical accident in the mine, he was not told about it until the next morning; consequently the prisoner received no medical attention until then (R. 97). The Japanese medicines sent to the camp were adequate (R. 100). Some Red Cross medicines had to be kept in a storeroom of the intendance department because the dispensary was small (R. 101). Doctor Kahn never complained to him that he was not issued Red Cross medicines (R. 101). He denied that he did not issue to Doctor Kahn the surgical instruments he had brought from China (R. 102).

Accused Kikuchi admitted on the stand that he had hit two prisoners of war once each because they had failed to salute him. He did not know any prisoners by the name of Hill and Houschildt (R. 104). There never was an occasion where only two prisoners were dispatched to get fuki with a cart. Usually for such purposes there was a detail of 30 to 40 prisoners (R. 105). He did not recall a prisoner by the name of Ryan. He did not hit prisoners with his sword (R. 106) or with his fist (R. 107, 110). There was one occasion when prisoners were pulling the cart with fuki and there were many local Japanese civilians present who accused feared that lest the prisoners might be harmed by the civilians and he shook some fuki at the prisoners to make them hurry and inadvertently struck a prisoner of war (R. 109). He admitted shoving prisoners "not very hard" (R. 110). He admitted further that he had hit two prisoners for not saluting the galley door. He denied hitting a prisoner who was pulling a cart because he was not going fast enough (R. 112).

Accused Niizuma stated under oath that Doctor Kahn on no occasion ever complained to him about the accused Nakao. He never heard them argue. He was under the impression that things were going smoothly. He never saw a member of his camp staff strike a prisoner of war (R. 129). He heard of such an instance (R. 129). He heard that accused Kikuchi either slapped or pushed prisoners of war on three occasions. This accused investigated and Kikuchi said that the men were not obeying orders to salute, and because he was young, they

Restricted

Restricted

were trying to make a fool of him. This accused told him not to repeat such treatment to prisoners because it violated the branch camp commandant's policy. He discharged Kikuchi subsequently because of his bad physical condition (R. 130). Doctor Kahn never complained to this accused about the withholding of medicines. All medicines in the camp were made available to him (R. 131). All Red Cross medicines were given to the medical personnel. He never heard or saw accused Kikuchi or Nakao steal Red Cross supplies or medicines (R. 132). He advised the staff at the camp that the main camp commandant had ordered them to treat prisoners fairly (R. 133). He received no complaint about camp staff members beating prisoners (R. 141). He did not see accused Takeda beat a prisoner at the ceremony on the day they arrived (R. 141-142). He never saw accused Kikuchi beat a prisoner with fuki. He saw that there were Red Cross medicines in the dispensary when he attended daily sick call (R. 143). He never saw or heard of Nakao refusing to issue Red Cross medicines. He never received a complaint about Red Cross medicines or other medicines from Doctor Kahn. He never saw accused Nakao take Red Cross medicines out of the compound (R. 144). He never saw Red Cross medicines being used in the treatment of Japanese personnel. He never saw or heard that accused Nakao mistreated prisoners. He never saw prisoner Austin mistreated by any member of his staff (R. 145). Medical supplies were taken from the cabinet when Doctor Kahn needed them (R. 151-152). Doctor Kahn's surgical instruments, which he had brought with him from China, were not locked up (R. 151). Warrant Officer Hamas never made any direct complaints to this accused. Only when he was asked by this accused if the prisoners had any complaints did Hamas tell him that the prisoners were complaining of being hungry (R. 152).

Witness Ishigooka, who was at the camp in the general affairs section, stated he never saw accused Nakao or Kikuchi beat a prisoner of war (R. 155). He stated that he was a master sergeant and the highest ranking NCO in camp and in such capacity he never received a complaint concerning the conditions at the camp (R. 157).

Witness Isa, who was intendance sergeant at the camp (R. 158), never saw or heard of accused Nakao or Kikuchi's beating a prisoner of war (R. 160, 162-163). He never saw or heard of an instance where the camp staff took Red Cross supplies out of the camp for their own use (R. 160). He never saw or heard of accused Takeda beating prisoners of war (R. 163).

Witness Hosoi, main camp commander, testified that accused Niizuma did as well as he could in trying to obtain the "various types of facilities" for the prisoners of war (R. 171).

4. Opinion:

The record is legally sufficient to support the findings of the Commission. Each allegation of the charges and specifications of which the four accused were found guilty was substantiated by ample and competent evidence. The Commission was constituted by competent authority and had jurisdiction of the accused and of the offenses alleged.

The prosecution introduced its evidence by the testimony of a former prisoner of war and by affidavits of former prisoners of war, all of whom had been interned in the camp and were in a position to know the facts of the matters in issue. From such the guilt of the accused was firmly established.

The complete record shows that the accused had a fair trial and that they were well represented by competent counsel. They took the stand and testified in their own behalf. A careful scrutiny of the entire record fails to reveal any error which injuriously affected the substantial rights of the accused in any respect. The evidence supports the findings. There is no evidence that the accused were not sane at the time the alleged acts were committed and at the time of trial.

5. Recommendations:

There are no letters of clemency from any members of the Commission. The letters of clemency in behalf of accused Takeda have been carefully read and considered.

Restricted

The Commission sentenced accused Niizuma to confinement at hard labor for a period of eight (8) years, accused Kikuchi to confinement at hard labor for a period of eight (8) years, the accused Nakao to confinement at hard labor for a period of five (5) years and accused Takeda to confinement at hard labor for a period of five (5) years. The sentences are legal.

NIIZUMA

It is considered that the sentence as to this accused is not excessive in view of the offenses of which he has been found guilty. It is recommended that the sentence be approved. He was confined 23 November 1945, went to trial 14 May 1947 and was sentenced 23 May 1947. In compliance with established policy, because of the length of time he was in confinement prior to date of sentence, it is recommended that fifteen (15) months of the sentence to confinement at hard labor be remitted. Sugamo Prison, Tokyo, Honshu, Japan, will be the place of confinement.

NAKAO

It is considered that the sentence as to this accused is not excessive in view of the offenses of which he has been found guilty. It is recommended that the sentence be approved. He was confined 8 December 1945, went to trial 14 May 1947, and was sentenced 23 May 1947. In compliance with established policy, because of the length of time he was in confinement prior to date of sentence, it is recommended that fourteen and one-half (14½) months of the sentence to confinement at hard labor be remitted. Sugamo Prison, Tokyo, Honshu, Japan, will be the place of confinement.

KIKUCHI

By comparison with sentences imposed by other commissions for offenses similar to those of which this accused has been found guilty, the sentence is excessive. It is recommended that only so much of the sentence as provides for confinement to hard labor for six (6) years be approved. This accused was confined 1 July 1946, went to trial 14 May 1947, and was sentenced 23 May 1947. In compliance with established policy, because of the length of time he was in confinement prior to date of sentence, it is recommended that eight (8) months of the sentence to confinement at hard labor be remitted. Sugamo Prison, Tokyo, Honshu, Japan, will be the place of confinement.

TAKEDA

This accused was confined 15 December 1945, went to trial 14 May 1947, and was sentenced 23 May 1947. By comparison with sentences imposed by other commissions for the offense of which the accused has been found guilty, the sentence is excessive. It is recommended that only so much of the sentence as provides for confinement at hard labor for two (2) years be approved, and that owing to the length of time the accused has been in confinement prior to the date of sentence the unserved portion of the sentence imposed be remitted.

6. Forms of action designed to carry these recommendations into effect are attached hereto.

PAUL E. SPURLOCK
Reviewer
Judge Advocate Section

I concur in general. However, as to Kikuchi it is considered that the sentence of eight years' confinement at hard labor is not excessive under the evidence. Two of the three specifications of which he was properly convicted contain allegations of mistreatments of multiple victims. Since this justifies the sentence

Restricted

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adjudged it is recommended that Kikuchi's sentence, less eight (8) months for pre-trial confinement, be approved.

ALLAN R. PROFFNE
Lt Colonel JAGD
Army Judge Advocate

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